

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

DEBBIE L. TREZVANT, TIMOTHY CAHILL,
DEBORAH CHERYL ARCH,
JOHN SWEENEY, JR., BRIE BASILIERE,
RUSSELL BROZ, JANE VINCENT,
LINDA BIRON, LAURENCE SOTT,
DEBRA MCDONALD-MUSTO,
LANCE MILNER, THOMAS WALTERS,
SYLVIE PARE-LALIBERTE, and
JENNIFER RAMBIN,

Plaintiffs,

v.

FIDELITY EMPLOYER SERVICES
CORPORATION, FIDELITY EMPLOYER
SERVICES COMPANY LLC, and FMR CORP.,

Defendants.

CIV. NO. 05-10673 WGY

**AFFIDAVIT OF BARRY J. MILLER, ESQ. IN SUPPORT OF DEFENDANTS'
EMERGENCY MOTION FOR DEFAULT JUDGMENT
AGAINST PLAINTIFFS WHO HAVE REFUSED TO PARTICIPATE IN DISCOVERY**

I, Barry J. Miller, Esq., under oath hereby depose and state:

1. I am an attorney with the law firm of Seyfarth Shaw LLP and, together with Richard Alfred, Esq. and Krista Green Pratt, Esq. (collectively, "Defendants' Counsel"), I represent Defendants Fidelity Employer Services Corporation, Fidelity Employer Services Company LLC, and FMR Corp. (collectively, "Defendants") in the above-captioned matter.

2. After the Court's May 3, 2006, Order granting the parties' Stipulation and Joint Motion to Decertify FLSA Collective Action to Join Parties Plaintiff, and to Amend Scheduling Order, Attorney Pratt and I undertook to confer with Ira Spiro, Esq., J. Mark Moore, Esq.,

Charles Joseph, Esq., and Maimon Kirschenbaum, Esq. (collectively, "Plaintiffs' Counsel") regarding the scheduling of remaining discovery events in the case.

3. After several telephone conversations with Attorneys Spiro and Joseph regarding the remaining discovery events in the case, including the depositions of the Plaintiffs, on Wednesday, May 17, 2006, I sent an e-mail message to Attorneys Spiro and Joseph proposing a schedule for the remaining discovery events in the case. A true and accurate copy of that message is attached at Tab A.

4. Though I had proposed a telephone call on May 18, 2006, to discuss the schedule Defendants had proposed, Plaintiffs' Counsel notified Defendants' Counsel that they were unavailable to discuss the matter for the remainder of the week. A true and accurate copy of Attorney Spiro's May 18, 2006, e-mail regarding his availability is attached at Tab B. In response, Attorney Pratt sent a message to Plaintiffs' Counsel emphasizing the importance of scheduling the remaining discovery events and the short period of time remaining in the discovery period. A true and accurate of Attorney Pratt's response is attached at Tab C.

5. In response to Attorney Pratt's May 18 e-mail, Plaintiffs' Counsel proposed a telephone conference on Sunday, May 21, 2006 to discuss the scheduling of remaining discovery events. True and accurate copies of e-mail correspondence from Attorneys Spiro and Joseph suggesting the May 21 telephone conference and confirming their availability for same is attached at Tab D.

6. On Sunday, May 21, 2006, Attorney Pratt and I had a telephone conference with Attorneys Spiro and Joseph regarding the scheduling of discovery. During that telephone conference, Plaintiffs' Counsel proposed only one change to the schedule set forth in my May 17 e-mail; they requested that Defendants produce documents responsive to Plaintiffs' requests

before any depositions took place. With that proposed change, Plaintiffs' Counsel agreed to the schedule proposed in my May 17 e-mail message. During the May 21 telephone conference, Attorney Joseph stated that on the following day, May 22, he would contact Plaintiffs and undertake to schedule their deposition within the time period stated in Defendants' proposed schedule (*i.e.*, between June 13 and June 30, 2006).

7. Defendants' Counsel undertook to schedule another telephone conference with Plaintiffs' Counsel during the week of May 22 to discuss the scheduling of the Plaintiffs' depositions. However, Plaintiffs' Counsel was unavailable for the scheduled call and suggested rescheduling the call for the following week on Tuesday, May 30, 2006. A true and accurate copy of an e-mail message from Attorney Spiro confirming Attorney Joseph's unavailability and the rescheduling of the telephone conference is attached at Tab E.

8. In at least two telephone conversations after the parties' May 21 telephone conference, Attorney Joseph stated to Attorney Pratt and me that he had not contacted the Plaintiffs to discuss the scheduling of their respective depositions, as he said he would during the May 21 telephone conference.

9. On June 2, 2006, J. Mark Moore, Esq. sent an e-mail message to Defendants' Counsel memorializing a conversation with Attorney Pratt in which she had assented on behalf of Defendants to an extension of time to June 6, 2006, for Plaintiffs to respond to Defendants' written discovery. In his June 2 e-mail message, Attorney Moore also noted that Attorney Pratt had "explained to [him] that defense counsel is quite concerned about the deposition scheduling issue, and asked that [Attorney Joseph's] office get in touch with them as soon as possible." A true and accurate copy of Attorney Moore's June 2 e-mail is attached at Tab F.

10. On June 5, 2006, Attorney Joseph wrote to Defendants' Counsel and stated that he would be unable to produce documents on June 6, as the parties' had agreed. In response, Attorney Pratt stated Defendants' view that Plaintiffs' Counsel had not met their obligations to cooperate in scheduling the remaining discovery in the case. Attorney Pratt noted that Plaintiffs' Counsel had failed to confirm dates for Plaintiffs' depositions, which were to begin the following week pursuant to the parties' agreement. Attorney Pratt also noted that Plaintiffs' failure to produce documents compromised Defendants' ability to prepare for the impending depositions. A true and accurate copy of Attorney Pratt's June 5 e-mail, which also contains Attorney Joseph's June 5 e-mail, is attached at Tab G.

11. On June 6, 2006, Plaintiffs' Counsel confirmed that Plaintiffs Cahill and Trezvant, two of the original named plaintiffs in this matter, would appear for deposition on June 13 and 14, respectively. A copy of Attorney Joseph's June 6 e-mail message regarding the depositions of Plaintiffs Cahill and Trezvant is attached at Tab H.

12. Plaintiffs' Counsel produced documents on behalf of Plaintiff Cahill on June 8, 2006, and on behalf of Plaintiff Trezvant on or about June 9.

13. On June 12, 2006, Attorney Pratt again wrote to Attorney Joseph regarding the scheduling of the Plaintiffs' depositions. She noted that Defendants' Counsel was willing to depose the remaining Plaintiffs' in any order that Plaintiffs' Counsel proposed and asked Attorney Joseph to confirm that Plaintiffs' Counsel still intended to produce the remaining Plaintiffs during the weeks of June 19 and June 26. A true and accurate copy of Attorney Pratt's June 12 e-mail message is attached at Tab I.

14. Defendants' Counsel took the deposition of Plaintiff Cahill on June 13, 2006. Because Plaintiffs' Counsel had not made hotel arrangements for the evening of June 13, the parties agreed to postpone Plaintiff Trezvant's deposition to June 19.

15. On June 20, 2006, I sent an e-mail message to Maimon Kirschenbaum, Esq. regarding the scheduling of the remaining Plaintiffs' depositions. As of that date, Plaintiffs' Counsel had not offered dates for any of the twelve (12) remaining Plaintiffs. In my message to Attorney Kirschenbaum, I again noted that, with one exception, Defendants were willing to depose the remaining Plaintiffs in any order. My message also noted that Defendants still had not received document productions on behalf of the Plaintiffs who had not been deposed. A true and accurate copy of my June 20 e-mail message to Attorney Kirschenbaum is attached at Tab J.

16. Between June 20 and 23, Plaintiffs' Counsel proposed the following deposition dates: Plaintiff Arch for June 28, Plaintiff Biron for June 29, Plaintiff Sott for June 29, Plaintiff McDonald-Musto for July 5, Plaintiff Broz for July 6, and Plaintiff Pare-Laliberte for July 10. Plaintiffs' Counsel also informed Defendants' Counsel that Plaintiff Sweeney was available for deposition on July 5.

17. On June 23, 2006, Attorney Pratt again wrote to Attorney Kirschenbaum, noting that Plaintiffs' Counsel still had not proposed deposition dates for five of the Plaintiffs and asking that Plaintiffs' Counsel provide such dates by June 26. A true and accurate copy of Attorney Pratt's June 23 e-mail message is attached at Tab K.

18. Plaintiffs' Counsel produced documents responsive Defendants' Requests on behalf of Plaintiff Arch on June 20, and she appeared for deposition on June 28. Plaintiff's Counsel produced documents on behalf of Plaintiff Biron on June 23, and she appeared for deposition on June 29. Plaintiffs' Counsel produced documents on behalf of Plaintiff

McDonald-Musto on June 30, and she appeared for deposition on July 5. Plaintiffs' Counsel produced documents on behalf of Plaintiff Sott on June 27, and he appeared for deposition on July 6. Plaintiffs' Counsel produced documents on behalf of Plaintiff Broz on June 28, and he appeared for deposition on July 6.

19. On June 23, 2006, I spoke by telephone with Attorney Spiro regarding several topics relating to this matter, including the scheduling of the remaining Plaintiffs' depositions. During that conversation, I informed Attorney Spiro that Defendants were concerned that the parties would not be able to complete all of the discovery they had noticed, in light of Plaintiffs' Counsel's failure to provide dates for the depositions of the remaining Plaintiffs.

20. On June 27, 2006, I spoke with Attorney Kirschenbaum by telephone regarding the scheduling of the remaining Plaintiffs' depositions. During that conversation, Attorney Kirschenbaum informed me that Plaintiff Sweeney, whose deposition had been scheduled for July 5, would not appear on that date. Plaintiffs' Counsel subsequently informed Defendants' Counsel that Plaintiff Sweeney preferred to be deposed on a weekend and may not be willing or able to attend a deposition on a weekday.

21. On June 29, Attorney Pratt again sent an e-mail message to Plaintiffs' Counsel regarding the scheduling of the remaining Plaintiffs' depositions. In her message, Attorney Pratt noted that Plaintiffs' Counsel had not proposed deposition dates for Plaintiffs' Sweeney, Vincent, Rambin, Walters, Milner, or Basiliere. She noted that the discovery period was drawing to a close, and expressed concern about the parties' ability to complete the noticed discovery in the time allotted. Attorney Pratt further informed Plaintiffs' Counsel that, if they did not provide proposed dates for the remaining Plaintiffs' depositions in the near future,

Defendants would be forced to seek relief from the Court. A true and accurate copy of Attorney Pratt's June 29 message is attached at Tab L.

22. On the afternoon of Friday, July 7, 2006, Attorney Pratt and I spoke with Attorney Spiro regarding several issues pertaining to this litigation. We again stated to Attorney Spiro that Defendants would be forced to seek dismissal of the remaining Plaintiffs, if Plaintiffs' Counsel did not propose dates for their depositions immediately.

23. Later on the afternoon of Friday, July 7, 2006, Attorney Kirschenbaum sent an e-mail message to Defendants' Counsel canceling the deposition of Plaintiff Pare-Laliberte, which was scheduled to begin the following Monday, July 10, 2006, at 10:00 a.m. A true and accurate copy of Attorney Kirschenbaum's July 7 message is attached at Tab M. As of the date of this affidavit, Plaintiffs' Counsel have not produced documents on behalf of Plaintiff Pare-Laliberte or provided an alternative date for her deposition.

Signed under the penalties of perjury this 11th day of July, 2006.

/s/ Barry J. Miller
Barry J. Miller

CERTIFICATE OF SERVICE

I hereby certify that this document was filed through the Court's ECF system
and that a true copy of the above document was served
on Ira Spiro, Esq. counsel for Plaintiffs, by first class mail on July 11, 2006.

/s/ Barry J. Miller
Barry J. Miller

Miller, Barry

From: Miller, Barry
Sent: Wednesday, May 17, 2006 3:14 PM
To: 'Ira spiro'; 'Ira Spiro'; 'Charles Joseph'
Cc: Alfred, Richard; Pratt, Krista
Subject: Trezvant - proposed schedule for remaining discovery

Ira and Charles,

As we have discussed, we believe that it is critical to schedule the remaining discovery events in the Trezvant case as soon as possible. We understand that you have moved to stay the case, but we believe the court is unlikely to grant any such relief and must proceed on the assumption that discovery will close on July 21. As such, we propose the following schedule:

May 30: Deadline for Plaintiffs produce all interrogatory responses and documents in response to Defendants' discovery requests.

June 13 - 16: Depositions of Plaintiffs Cahill, Trezvant, and Arch.

June 19 - 30: Depositions of all remaining Plaintiffs (11 total).

July 6: Deadline for Defendants to produce all interrogatory responses and documents in response to Plaintiffs' discovery requests.

July 17 - 21: Plaintiffs take 30(b)(6) deposition(s), if necessary.

We remain amenable to discussing the scope of both sides' written discovery requests, and we believe that the parties should conclude those discussions immediately. As to logistics for depositions, we believe it makes sense for all depositions to take place at our offices in Boston. The schedule is simply too short to allow time for counsel to travel to various locations in New Hampshire. We are able to take concurrent depositions on up to three tracks, and we assume that you are adequately staffed to defend more than one deposition at a time.

We suggest a call tomorrow to discuss and finalize the discovery schedule. Please let us know your availability.

Thank you,

Barry J. Miller
Seyfarth Shaw LLP
Two Seaport Lane, Suite 300
Boston, MA 02210
office phone: (617) 946-4800
direct phone: (617) 946-4806
office fax: (617) 946-4801
direct fax: (617) 790-6753

Miller, Barry

From: Ira Spiro [ispiro@smbhblaw.com]
Sent: Thursday, May 18, 2006 6:49 PM
To: Pratt, Krista; 1 - Ira Spiro (home); Alfred, Richard; Miller, Barry
Cc: Palmer Michael; Hester Diane; Charles Joseph; Kenney Tom; Maimon Kirschenbaum; Mark Moore
Subject: RE: Trezvant - proposed schedule for remaining discovery

Folks . . .

I was out of town in depositions Tuesday and Wednesday, and didn't back get to office til mi-day today. I have hearing on motion for summary judgment by opposition tomorrow, so I have to devote my attention to that rest of today and tomorrow. I can turn my attention to the email below after that.

Ira

Ira Spiro
Spiro Moss Barness Harrison & Barge LLP
310-235-2468, fax 310-235-2456
11377 W. Olympic Blvd., 5th Floor
Los Angeles, CA 90064
ispiro@smbhblaw.com
ispiro@comcast.net

-----Original Message-----

From: Miller, Barry [mailto:BMiller@seyfarth.com]
Sent: Wednesday, May 17, 2006 11:14 AM
To: ira spiro; Ira Spiro; Charles Joseph
Cc: Alfred, Richard; Pratt, Krista
Subject: Trezvant - proposed schedule for remaining discovery

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Miller, Barry

From: Pratt, Krista
Sent: Thursday, May 18, 2006 7:38 PM
To: 'Ira Spiro'; '1 - Ira Spiro (home)'; Alfred, Richard; Miller, Barry
Cc: 'Palmer Michael'; 'Hester Diane'; 'Charles Joseph'; 'Kenney Tom'; 'Maimon Kirschenbaum'; 'Mark Moore'
Subject: RE: Trezvant - proposed schedule for remaining discovery

Ira: We understand that your schedule is very busy. However, our time to complete discovery is very short (no extensions are likely) and we have 14 depositions to schedule in the near future. If we could schedule a specific time to discuss the depositions, that would be best. Or, if your schedule will not permit a discussion this week, perhaps we can discuss scheduling discovery with Charles? We really need to move forward with the depositions. Motion practice definitely is not a preferred course of action, but we cannot appear to be complacent about pursuing discovery (Judge Young tends to be unsympathetic to litigants who - in his view - sit on their discovery rights).

Thanks,
Krista

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Sent: Thursday, May 18, 2006 6:49 PM
To: Pratt, Krista; 1 - Ira Spiro (home); Alfred, Richard; Miller, Barry
Cc: Palmer Michael; Hester Diane; Charles Joseph; Kenney Tom; Maimon Kirschenbaum; Mark Moore
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Ira

Ira Spiro
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310-235-2468, fax 310-235-2456
11377 W. Olympic Blvd., 5th Floor
Los Angeles, CA 90064
ispiro@smbhblaw.com
ispiro@comcast.net

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Cc: 'Palmer Michael'; 'Hester Diane'; 'Charles Joseph'; 'Kenney Tom'; 'Maimon Kirschenbaum'; 'Mark Moore'
Subject: RE: Trezvant - proposed schedule for remaining discovery

I just cannot discuss it til after Friday. I am willing to discuss it even this coming Saturday or Sunday, or Monday morning. As to Saturday, however, Charles cannot do business on Saturday because of very strong religious reasons, and I believe we need both him and me for the discussion. Must stop and get back to my summary judgment hearing.

Ira

Ira Spiro
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310-235-2468, fax 310-235-2456
11377 W. Olympic Blvd., 5th Floor
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Miller, Barry

From: charles Joseph [charles@JHLLP.com]
Sent: Saturday, May 20, 2006 9:10 PM
To: ira spiro; Alfred, Richard; Pratt, Krista; Miller, Barry
Cc: 1- Ira -- SMBHB; Bella Kirschenbaum; Mark Moore; Maimon Kirschenbaum; Kenney Tom; diane Hester; Michael Palmer
Subject: RE: Trezvant - proposed schedule for remaining discovery

I am available for Sunday.

In case there's any mix-up, I will be at home, 973-779-6212.

Charles

From: Ira spiro [mailto:ispiro@comcast.net]
Sent: Sat 5/20/2006 5:45 PM
To: Alfred, Richard; Pratt, Krista; charles Joseph; Miller, Barry
Cc: 1- Ira -- SMBHB; Bella Kirschenbaum; Mark Moore; Maimon Kirschenbaum; Kenney Tom; diane Hester; Michael Palmer
Subject: Re: Trezvant - proposed schedule for remaining discovery

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In case there's any mix-up, I will be at home, 310-287-2007.

Ira

Ira Spiro
Spiro Moss Barness Harrison & Barge, LLP
310-235-2468, fax 310-235-2456
11377 W. Olympic Blvd., Fifth Floor
Los Angeles, CA 90064
ispiro@smbhblaw.com
ispiro@comcast.net

----- Original Message -----

From: "Miller, Barry" <BMiller@seyfarth.com>
To: "charles Joseph" <charles@JHLLP.com>; "Ira Spiro" <ispiro@smbhblaw.com>;
"Pratt, Krista" <KPratt@seyfarth.com>; "1 - Ira Spiro (home)"
<ispiro@comcast.net>; "Alfred, Richard" <RAlfred@seyfarth.com>
Cc: "Michael Palmer" <mpalmer@jhllp.com>; "diane Hester" <diane@JHLLP.com>;
"Kenney Tom" <tom@piercemandell.com>; "Maimon Kirschenbaum"
<Maimon@JHLLP.com>; "Mark Moore" <mmoore@smbhblaw.com>; "Bella Kirschenbaum"
<bella@JHLLP.com>
Sent: Friday, May 19, 2006 4:38 PM
Subject: RE: Trezvant - proposed schedule for remaining discovery

We haven't yet heard from Ira as to his availability, but if the scheduling works, please use the following call-in information

(866)606-4698
access code: 9369961

7/10/2006

Ira, if the suggested time works for you, please confirm.

Thanks

-----Original Message-----

From: Charles Joseph [mailto:charles@JHLLP.com]
Sent: Friday, May 19, 2006 11:43 AM
To: Miller, Barry; Ira Spiro; Pratt, Krista; 1 - Ira Spiro (home);
Alfred, Richard
Cc: Michael Palmer; Diane Hester; Kenney Tom; Maimon Kirschenbaum; Mark
Moore; Bella Kirschenbaum
Subject: RE: Trezvant - proposed schedule for remaining discovery

I am.

Bella-pls calendar

Charles Joseph
Joseph & Herzfeld LLP
757 Third Ave., 25th Floor
New York NY 10017
(212) 688-5640 phone
(212) 688-2548 fax
charles@jhlpl.com
<http://www.jhlpl.com>

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-----Original Message-----

From: Miller, Barry [mailto:BMiller@seyfarth.com]
Sent: Friday, May 19, 2006 11:40 AM
To: Ira Spiro; Pratt, Krista; 1 - Ira Spiro (home); Alfred, Richard
Cc: Michael Palmer; Diane Hester; Charles Joseph; Kenney Tom; Maimon
Kirschenbaum; Mark Moore
Subject: RE: Trezvant - proposed schedule for remaining discovery

Ira and Charles,

Krista and I are available at 2pm EDT on Sunday (5/21) for a call. Are the two of you available at that time?

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Subject: RE: Trezvant - proposed schedule for remaining discovery

7/10/2006

I just cannot discuss it til after Friday. I am willing to discuss it even this coming Saturday or Sunday, or Monday morning. As to Saturday, however, Charles cannot do business on Saturday because of very strong religious reasons, and I believe we need both him and me for the discussion. Must stop and get back to my summary judgment hearing.

Ira

Ira Spiro
Spiro Moss Barness Harrison & Barge LLP
310-235-2468, fax 310-235-2456
11377 W. Olympic Blvd., 5th Floor
Los Angeles, CA 90064
ispiro@smbhblaw.com
ispiro@comcast.net

-----Original Message-----

From: Pratt, Krista [<mailto:KPratt@seyfarth.com>]
Sent: Thursday, May 18, 2006 3:38 PM
To: Ira Spiro; 1 - Ira Spiro (home); Alfred, Richard; Miller, Barry
Cc: Palmer Michael; Hester Diane; Charles Joseph; Kenney Tom; Maimon Kirschenbaum; Mark Moore
Subject: RE: Trezvant - proposed schedule for remaining discovery

Ira: We understand that your schedule is very busy. However, our time to complete discovery is very short (no extensions are likely) and we have 14 depositions to schedule in the near future. If we could schedule a specific time to discuss the depositions, that would be best. Or, if your schedule will not permit a discussion this week, perhaps we can discuss scheduling discovery with Charles? We really need to move forward with the depositions. Motion practice definitely is not a preferred course of action, but we cannot appear to be complacent about pursuing discovery (Judge Young tends to be unsympathetic to litigants who - in his view - sit on their discovery rights).

Thanks,
Krista

-----Original Message-----

From: Ira Spiro [<mailto:ispiro@smbhblaw.com>]
Sent: Thursday, May 18, 2006 6:49 PM
To: Pratt, Krista; 1 - Ira Spiro (home); Alfred, Richard; Miller, Barry
Cc: Palmer Michael; Hester Diane; Charles Joseph; Kenney Tom; Maimon Kirschenbaum; Mark Moore
Subject: RE: Trezvant - proposed schedule for remaining discovery

Folks . . .

I was out of town in depositions Tuesday and Wednesday, and didn't back get to office til mi-day today. I have hearing on motion for summary judgment by opposition tomorrow, so I have to devote my attention to that rest of today and tomorrow. I can turn my attention to the email below after that.

Ira

7/10/2006

Ira Spiro
Spiro Moss Barness Harrison & Barge LLP
310-235-2468, fax 310-235-2456
11377 W. Olympic Blvd., 5th Floor
Los Angeles, CA 90064
ispiro@smbhblaw.com
ispiro@comcast.net

-----Original Message-----

From: Miller, Barry [mailto:BMiller@seyfarth.com]
Sent: Wednesday, May 17, 2006 11:14 AM
To: ira spiro; Ira Spiro; Charles Joseph
Cc: Alfred, Richard; Pratt, Krista
Subject: Trezvant - proposed schedule for remaining discovery

Ira and Charles,

As we have discussed, we believe that it is critical to schedule the remaining discovery events in the Trezvant case as soon as possible. We understand that you have moved to stay the case, but we believe the court is unlikely to grant any such relief and must proceed on the assumption that discovery will close on July 21. As such, we propose the following schedule:

May 30: Deadline for Plaintiffs produce all interrogatory responses and documents in response to Defendants' discovery requests.

June 13 - 16: Depositions of Plaintiffs Cahill, Trezvant, and Arch.

June 19 - 30: Depositions of all remaining Plaintiffs (11 total).

July 6: Deadline for Defendants to produce all interrogatory responses and documents in response to Plaintiffs' discovery requests.

July 17 - 21: Plaintiffs take 30(b)(6) deposition(s), if necessary.

We remain amenable to discussing the scope of both sides' written discovery requests, and we believe that the parties should conclude those discussions immediately. As to logistics for depositions, we believe it makes sense for all depositions to take place at our offices in Boston. The schedule is simply too short to allow time for counsel to travel to various locations in New Hampshire. We are able to take concurrent depositions on up to three tracks, and we assume that you are adequately staffed to defend more than one deposition at a time.

We suggest a call tomorrow to discuss and finalize the discovery schedule. Please let us know your availability.

Thank you,

Barry J. Miller
Seyfarth Shaw LLP
Two Seaport Lane, Suite 300
Boston, MA 02210
office phone: (617) 946-4800
direct phone: (617) 946-4806
office fax: (617) 946-4801

7/10/2006

direct fax: (617) 790-6753

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7/10/2006

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7/10/2006

Miller, Barry

From: Ira Spiro [ispiro@smbhblaw.com]
Sent: Friday, May 26, 2006 5:22 PM
To: Palmer Michael; Hester Diane; 1 - Ira Spiro (home); Charles Joseph; Kenney Tom; Maimon Kirschenbaum; Mark Moore; Pratt, Krista; Alfred, Richard; Miller, Barry
Subject: Fidelity adv Trezvant, conf call May 30, 3 eastern

Subject to Charles' availability, we have scheduled another conference call for this coming Tuesday, May 30, 3 pm Eastern, 12 noon Pacific, primarily to discuss scheduling of depositions of plaintiffs. (Charles was unavoidably unavailable today because of a mediation, which went into a second day as I understand it.)

Charles, if you can before then, please email us if you are available then, and if not some other near dates and times.

Ira

Ira Spiro
Spiro Moss Barness Harrison & Barge LLP
310-235-2468, fax 310-235-2456
11377 W. Olympic Blvd., 5th Floor
Los Angeles, CA 90064
ispiro@smbhblaw.com
ispiro@comcast.net

Miller, Barry

From: J. Mark Moore [mmoore@smbhblaw.com]
Sent: Friday, June 02, 2006 12:21 PM
To: Miller, Barry; Pratt, Krista; Alfred, Richard
Cc: 'charles Joseph'; 'Ira Spiro'; 'Maimon Kirschenbaum'; 'Bella Kirschenbaum'; 'diane Hester'; 'Kenney Tom'; 'Michael Palmer'
Subject: Fidelity adv. Trezvant discovery extension/depositions

This will confirm that this morning Krista Pratt/Defendants granted Plaintiffs until June 6, 2006 to respond to the discovery that was due today. Krista, your professional courtesy is very much appreciated.

On another note, Krista explained to me that defense counsel is quite concerned about the deposition scheduling issue, and asked that Charles' office get in touch with them as soon as possible.

Have a good weekend, all.

J. Mark Moore, Esq.
Spiro Moss Barness Harrison & Barge LLP
11377 W. Olympic Blvd., 5th Floor
Los Angeles, CA 90064
Tel: 310-235-2468
Fax: 310-235-2456

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Thank you.

7/10/2006

Miller, Barry

From: Pratt, Krista
Sent: Monday, June 05, 2006 7:31 PM
To: 'charles Joseph'; 'mmoore@smbhblaw.com'; 'Ira Spiro'; 'ispiro@comcast.net'; 'tom@piercemandell.com'; 'ispiro@smbhblaw.com'
Cc: Miller, Barry; Alfred, Richard
Subject: RE: FIDELITY.Trezvant Proposed Confidentiality Order_v1.DOC

Charles:

When I spoke with Mark at Ira's office on Friday, I specifically refused the request for an extension of time to end of this week and told him that we needed the documents by tomorrow to adequately prepare for the depositions. I am particularly troubled by the fact that this schedule was agreed upon because you insisted on receiving our documents before the plaintiffs' depositions. Even though you had no right to insist on receiving the documents first, we agreed to produce the documents by tomorrow in the spirit of cooperation, and notwithstanding considerable burden on us to get the documents ready on time. We have held up our end of the deal, and you are not holding up yours. Your proposal to get us the documents by Friday impedes our preparation for the depositions and is not fair or reasonable under the circumstances. We have been more than reasonable in the scheduling of discovery in this case (with numerous calls and emails). I regret having to take a hard line at this point, but we feel that our ability to take the depositions is compromised by further delays. We do not agree to extend the deadline for your document production to Friday. Further, you have had the proposed deposition dates since Barry emailed you on May 17. We are now one week away from the depositions. If you do not confirm Mr. Cahill's availability for June 13 by tomorrow, we will move to compel his attendance. Under the circumstances, we have no other options.

Our documents will be ready for inspection at our offices tomorrow by 5 pm, pending the agreement regarding confidentiality.
Krista

-----Original Message-----

From: charles Joseph [mailto:charles@JHLLP.com]
Sent: Monday, June 05, 2006 6:17 PM
To: Pratt, Krista; mmoore@smbhblaw.com; Ira Spiro; ispiro@comcast.net; tom@piercemandell.com; ispiro@smbhblaw.com
Cc: Miller, Barry; Alfred, Richard
Subject: RE: FIDELITY.Trezvant Proposed Confidentiality Order_v1.DOC

I am waiting to hear back from Cahill. No way can I get the docs to you tomorrow. I need till end of week. I'll make it a "rolling production"

I do not think it is a lot

From: Pratt, Krista [mailto:KPratt@seyfarth.com]
Sent: Mon 6/5/2006 6:01 PM
To: charles Joseph; mmoore@smbhblaw.com; Ira Spiro; ispiro@comcast.net; tom@piercemandell.com; ispiro@smbhblaw.com
Cc: Miller, Barry; Alfred, Richard
Subject: RE: FIDELITY.Trezvant Proposed Confidentiality Order_v1.DOC

We would prefer to do Mr. Cahill first. If he is available on the 13th, we'd like to schedule him then and do Arch's deposition later in the week (maybe on the 16th?).

-----Original Message-----

7/10/2006

From: charles Joseph [mailto:charles@JHLLP.com]
Sent: Monday, June 05, 2006 4:37 PM
To: Pratt, Krista; mmoore@smbhblaw.com; Ira Spiro; ispiro@comcast.net; tom@piercemandell.com; ispiro@smbhblaw.com
Cc: Miller, Barry; Alfred, Richard
Subject: RE: FIDELITY.Trezvant Proposed Confidentiality Order_v1.DOC

Ms. Arch is only available on the 13th--her boss is out for a charity golf tournament. I explained you preferred Cahill on the 13. She said there is always a chance that she could do it on the 15th, but if we want to know now, the 13th is all that is available.

From: Pratt, Krista [mailto:KPratt@seyfarth.com]
Sent: Mon 6/5/2006 3:53 PM
To: mmoore@smbhblaw.com; charles Joseph; Ira Spiro; ispiro@comcast.net; tom@piercemandell.com
Cc: Miller, Barry; Alfred, Richard
Subject: FIDELITY.Trezvant Proposed Confidentiality Order_v1.DOC

Ira and Charles:

Some of the information contained in the documents we will be producing is considered confidential by Fidelity. This information includes client names and related information. We have attached a draft confidentiality agreement for your consideration and review, which we have successfully used in other cases we have litigated before Judge Young. Please let me know whether you will join in a motion to the court to enter a confidentiality order, and whether the attached form is acceptable to you.

Also, in preparation for the document production tomorrow, would you agree to keep any documents we produce confidential until we agree upon the terms and the court enters a confidentiality order?

Thanks,
Krista

<<FIDELITY.Trezvant Proposed Confidentiality Order_v1.DOC>>

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Pratt, Krista

From: charles Joseph [charles@JHLLP.com]
Sent: Tuesday, June 06, 2006 9:53 PM
To: Pratt, Krista
Subject: RE: FIDELITY.Trezvant Proposed Confidentiality Order_v1.DOC

ok, so Cahill on 13, trezvant on 14. Arch could only do 13, so hers will be the following week. She has two possible days the following week. I will let you know.

From: Pratt, Krista [mailto:KPratt@seyfarth.com]
Sent: Tue 6/6/2006 5:00 PM
To: charles Joseph
Subject: RE: FIDELITY.Trezvant Proposed Confidentiality Order_v1.DOC

Sorry - not ignoring you. I don't have the authority to okay that, so I need to check with Richard, who is out of the office. I will try to get back to you as soon as I can.

-----Original Message-----

From: charles Joseph [mailto:charles@JHLLP.com]
Sent: Tuesday, June 06, 2006 4:43 PM
To: Pratt, Krista
Subject: RE: FIDELITY.Trezvant Proposed Confidentiality Order_v1.DOC

Pls reply about the response!

Charles Joseph
Joseph & Herzfeld LLP
757 Third Ave., 25th Floor
New York NY 10017
(212) 688-5640 phone
(212) 688-2548 fax
charles@jhllp.com
<http://www.jhllp.com>

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From: Pratt, Krista [mailto:KPratt@seyfarth.com]
Sent: Tuesday, June 06, 2006 3:04 PM
To: charles Joseph
Subject: RE: FIDELITY.Trezvant Proposed Confidentiality Order_v1.DOC

Can you let me know about the copying? Should we go ahead and have them copied?

-----Original Message-----

From: charles Joseph [mailto:charles@JHLLP.com]
Sent: Tuesday, June 06, 2006 2:49 PM
To: Pratt, Krista
Subject: RE: FIDELITY.Trezvant Proposed Confidentiality Order_v1.DOC

I will have Trezvant docs tomorrow.

Working on the other two.

Now that we are discussing it, how about saving me time and agreeing that my responses and objections to the first set of doc requests are deemed responsive to the second set to be interpreted broadly in the event there are substantive difference between the two. Just say yes. Saves ne some cutting and pasting time.

Charles Joseph
Joseph & Herzfeld LLP
757 Third Ave., 25th Floor
New York NY 10017
(212) 688-5640 phone
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charles@jhllp.com
<http://www.jhllp.com>

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From: Pratt, Krista [mailto:KPratt@seyfarth.com]
Sent: Tuesday, June 06, 2006 2:24 PM
To: charles Joseph
Subject: RE: FIDELITY.Trezvant Proposed Confidentiality Order_v1.DOC

Charles: The cost is approx. .16 page or a rough figure of \$800 for the full copy job. Since we use a vendor for this service, the quoted price is at "cost." Let me know if that is acceptable.
Krista

-----Original Message-----

From: charles Joseph [mailto:charles@JHLLP.com]
Sent: Tuesday, June 06, 2006 1:52 PM
To: Pratt, Krista
Cc: Miller, Barry; Alfred, Richard; Michael Palmer; mmoore@smbhblaw.com; ispiro@comcast.net; Ira Spiro; tom@piercemandell.com; Maimon Kirschenbaum
Subject: RE: FIDELITY.Trezvant Proposed Confidentiality Order_v1.DOC

Barry and Krista—ignore my voicemails. I spoke to Richard who is checking with your client about consenting to an extension of our further briefing on certification or motion for reconsideration or whatever it is.

Charles Joseph
Joseph & Herzfeld LLP
757 Third Ave., 25th Floor
New York NY 10017
(212) 688-5640 phone
(212) 688-2548 fax
charles@jhllp.com
<http://www.jhllp.com>

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7/6/2006

From: Pratt, Krista [mailto:KPratt@seyfarth.com]
Sent: Tuesday, June 06, 2006 1:39 PM
To: charles Joseph
Cc: Miller, Barry; Alfred, Richard
Subject: RE: FIDELITY.Trezvant Proposed Confidentiality Order_v1.DOC

Charles: At the moment, we have an inspection set in our office. If you would like us to have the documents copied and sent to your office, we are happy to do that. I can get you an estimate of the cost from our copy center, but if you want to solicit other estimates (in case it might be cheaper), you are free to do so. Just let us know where you would like us to send the documents for copying.

We have interoffice mailing but not for something this size, so we would need to send it Fed Ex. Let me know if you would like us to use our Fed Ex account or yours. If we use ours, let me know how you would like to coordinate payment of the mailing costs.

We'd appreciate receiving any documents concerning Cahill, Trezvant and Arch as soon as possible, since their depositions are next week.

Thanks,
Krista

-----Original Message-----

From: charles Joseph [mailto:charles@JHLLP.com]
Sent: Tuesday, June 06, 2006 11:21 AM
To: Pratt, Krista; mmoore_smbhblaw.com@ns.advancedemedia.com
Cc: mmoore@smbhblaw.com; Ira Spiro; ispiro@comcast.net; tom@piercemandell.com; Miller, Barry; Alfred, Richard
Subject: RE: FIDELITY.Trezvant Proposed Confidentiality Order_v1.DOC

Are these our set, already copied? If so, how much was the copying? Is there a local shop you could send to for copying cheaper than what your firm charges? We would like the boxes fedexed or UPS'd for delivery on Friday to Ira's office or mine. Mark--where do we prefer the boxes sent? Can you give Krista your Fedex account number? I am guessing 3 or 4 boxes will cost a few hundred Dollars, with about the same amount for copying.

Krista--do you have a delivery by van scheduled periodically from your Boston office to your NY office?

Krista--I will send you responses and objections to your second set of documents requests and you (only?) set of interrogatories later today. I will get you what documents I can today. I assume you want me to focus on the 3 first deponents first. As to the others, are you ok with receiving those docs by early next week at the latest?

Charles Joseph

Joseph & Herzfeld LLP

757 Third Ave., 25th Floor

New York NY 10017

(212) 688-5640 phone

(212) 688-2548 fax

charles@jhllp.com

<http://www.jhllp.com>

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-----Original Message-----

From: Pratt, Krista [<mailto:KPratt@seyfarth.com>]

Sent: Tuesday, June 06, 2006 11:19 AM

To: mmoore_smbhblaw.com@ns.advancedemedia.com; charles Joseph

Cc: mmoore@smbhblaw.com; Ira Spiro; ispiro@comcast.net;

tom@piercemandell.com; Miller, Barry; Alfred, Richard

Subject: RE: FIDELITY.Trezvant Proposed Confidentiality

Order_v1.DOC

Mark:

That sounds fine. How would you like to coordinate the document

production today? We estimate the volume to be about 3 or 4 bankers'

boxes, and they should be ready by 5 pm.

Thanks,

Krista

-----Original Message-----

From: mmoore_smbhblaw.com@ns.advancedemedia.com

[mailto:mmoore_smbhblaw.com@ns.advancedemedia.com]

Sent: Tuesday, June 06, 2006 11:05 AM

To: charles Joseph

Cc: Pratt, Krista; mmoore@smbhblaw.com; Ira Spiro;

ispiro@comcast.net;

tom@piercemandell.com; Miller, Barry; Alfred, Richard

7/6/2006

Subject: RE: FIDELITY.Trezvant Proposed Confidentiality
Order_v1.DOC

Krista:

It appears I will be handling the confidentiality issue.
Anyway, we

agree

that any docs produced today will be kept confidential until a
formal

confidentiality agreement/order is entered, at which time that
agreement

will take precedence.

My day today is quite busy. I have not yet looked at your
proposed

agreement, but I will do so and will get back to you, hopefully
by end

of

day tomorrow, with any revisions we believe are necessary.

-- Mark

> That is for Mr. Moore.

>

>

>

> Charles Joseph

>

> Joseph & Herzfeld LLP

> 757 Third Ave., 25th Floor

> New York NY 10017

> (212) 688-5640 phone

7/6/2006

> (212) 688-2548 fax

>

> charles@jhllp.com

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> <http://www.jhllp.com>

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> may violate the addressee's rights. If you have received this e-mail

in

> error, please notify us immediately and remove it from your electronic

> files.

>

> _____

>

> From: Pratt, Krista [<mailto:KPratt@seyfarth.com>]

7/6/2006

> Sent: Tuesday, June 06, 2006 10:48 AM

> To: charles Joseph; mmoore@smbhblaw.com; Ira Spiro;
ispiro@comcast.net;

> tom@piercemandell.com; ispiro@smbhblaw.com

> Cc: Miller, Barry; Alfred, Richard

> Subject: RE: FIDELITY.Trezvant Proposed Confidentiality
Order_v1.DOC

>

>

>

> Great - thank you. Any thoughts on the confidentiality
agreement?

>

> -----Original Message-----

> From: charles Joseph [<mailto:charles@JHLLP.com>]

> Sent: Tuesday, June 06, 2006 10:26 AM

> To: Pratt, Krista; mmoore@smbhblaw.com; Ira Spiro;
ispiro@comcast.net; tom@piercemandell.com;
ispiro@smbhblaw.com

> Cc: Miller, Barry; Alfred, Richard

> Subject: RE: FIDELITY.Trezvant Proposed Confidentiality
Order_v1.DOC

>

> Cahill is confirmed for the 13th

>

>

>

> Charles Joseph

7/6/2006

>

> Joseph & Herzfeld LLP

> 757 Third Ave., 25th Floor

> New York NY 10017

> (212) 688-5640 phone

> (212) 688-2548 fax

>

> charles@jhllp.com

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and remove

> it from your electronic files.

>

>

7/6/2006

> _____

>

>

> From: Pratt, Krista [<mailto:KPratt@seyfarth.com>]

> Sent: Monday, June 05, 2006 7:31 PM

> To: charles Joseph; mmoore@smbhblaw.com; Ira Spiro;

> ispiro@comcast.net; tom@piercemandell.com;

> ispiro@smbhblaw.com

> Cc: Miller, Barry; Alfred, Richard

> Subject: RE: FIDELITY.Trezvant Proposed Confidentiality

> Order_v1.DOC

>

>

>

> Charles:

>

> When I spoke with Mark at Ira's office on Friday, I specifically

> refused the request for an extension of time to end of this week and

> told him that we needed the documents by tomorrow to adequately

> prepare

> for the depositions. I am particularly troubled by the fact that this

> schedule was agreed upon because you insisted on receiving our

> documents

> before the plaintiffs' depositions. Even though you had no right to

7/6/2006

> insist on receiving the documents first, we agreed to produce the

> documents by tomorrow in the spirit of cooperation, and notwithstanding

> considerable burden on us to get the documents ready on time. We have

> held up our end of the deal, and you are not holding up yours. Your

> proposal to get us the documents by Friday impedes our preparation for

> the depositions and is not fair or reasonable under the circumstances.

> We have been more than reasonable in the scheduling of discovery in

this

> case (with numerous calls and emails). I regret having to take a hard

> line at this point, but we feel that our ability to take the depositions

> is compromised by further delays. We do not agree to extend the

> deadline for your document production to Friday. Further, you have

had

> the proposed deposition dates since Barry emailed you on May 17. We

are

> now one week away from the depositions. If you do not confirm Mr.

> Cahill's availability for June 13 by tomorrow, we will move to compel

> his attendance. Under the circumstances, we have no other options.

>

7/6/2006

>

>

> Our documents will be ready for inspection at our
> offices

> tomorrow by 5 pm, pending the agreement regarding
> confidentiality.

>

> Krista

>

>

>

> -----Original Message-----

> From: charles Joseph [<mailto:charles@JHLLP.com>]

> Sent: Monday, June 05, 2006 6:17 PM

> To: Pratt, Krista; mmoore@smbhblaw.com; Ira Spiro;

> ispiro@comcast.net; tom@piercemandell.com;
> ispiro@smbhblaw.com

> Cc: Miller, Barry; Alfred, Richard

> Subject: RE: FIDELITY.Trezvant Proposed Confidentiality

> Order_v1.DOC

>

> I am waiting to hear back from Cahill. No way
> can I get

> the docs to you tomorrow. I need till end of week. I'll make
> it a

> "rolling production"

>

>

>

7/6/2006

> I do not think it is a lot

>

>

>

>

> _____

>

>

> From: Pratt, Krista
[mailto:KPratt@seyfarth.com]

> Sent: Mon 6/5/2006 6:01 PM

> To: charles Joseph; mmoore@smbhblaw.com; Ira
Spiro;

> ispiro@comcast.net; tom@piercemandell.com;
ispiro@smbhblaw.com

> Cc: Miller, Barry; Alfred, Richard

> Subject: RE: FIDELITY.Trezvant Proposed
Confidentiality

> Order_v1.DOC

>

> We would prefer to do Mr. Cahill first. If he
is

> available on the 13th, we'd like to schedule him then and do
Arch's

> deposition later in the week (maybe on the 16th?).

>

> -----Original Message-----

> From: charles Joseph
[mailto:charles@JHLLP.com]

> Sent: Monday, June 05, 2006 4:37 PM

7/6/2006

> To: Pratt, Krista; mmoore@smbhblaw.com;
Ira

> Spiro; ispiro@comcast.net; tom@piercemandell.com;
ispiro@smbhblaw.com

> Cc: Miller, Barry; Alfred, Richard

> Subject: RE: FIDELITY.Trezvant Proposed

> Confidentiality Order_v1.DOC

>

> Ms. Arch is only available on the 13th-
-her boss

> is out for a charity golf tournament. I explained you
preferred Cahill

> on the 13. She said there is always a chance that she could
do it on

the

> 15th, but if we want to know now, the 13th is all that is
available.

>

>

>

>

> _____

>

>

> From: Pratt, Krista
[mailto:KPratt@seyfarth.com]

> Sent: Mon 6/5/2006 3:53 PM

> To: mmoore@smbhblaw.com; charles
Joseph; Ira

> Spiro; ispiro@comcast.net; tom@piercemandell.com

> Cc: Miller, Barry; Alfred, Richard

7/6/2006

> Subject: FIDELITY.Trezvant Proposed

> Confidentiality Order_v1.DOC

>

> Ira and Charles:

>

> Some of the information contained in
the

> documents we will be producing

> is considered confidential by
Fidelity. This

> information includes

> client names and related information.
We have

> attached a draft

> confidentiality agreement for your
consideration

> and review, which we

> have successfully used in other cases
we have

> litigated before Judge

> Young. Please let me know whether you
will join

> in a motion to the

> court to enter a confidentiality order,
and

> whether the attached form is

> acceptable to you.

>

> Also, in preparation for the document
production

> tomorrow, would you

7/6/2006

> agree to keep any documents we produce

> confidential until we agree upon

> the terms and the court enters a
Confidentiality

> order?

> Thanks,

> Krista

> <<FIDELITY.Trezvant Proposed
Confidentiality

> Order_v1.DOC>>

>

> _____

> Any tax information or written tax
advice

> contained herein (including any attachments) is not intended
to be and

> cannot be used by any taxpayer for the purpose of avoiding
tax

penalties

> that may be imposed on the taxpayer. (The foregoing legend
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7/6/2006

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Miller, Barry

From: Pratt, Krista
Sent: Monday, June 12, 2006 9:26 AM
To: 'charles Joseph'
Cc: Alfred, Richard; Miller, Barry
Subject: RE: will i be getting your docs tomorrow?

Charles: We'd like to start both Cahill's and Trezvant's depositions at 9 am, if that is okay. We anticipate needing the full seven hours for both, so we wanted to make sure we finished at a reasonable time. Please confirm.

Also, we should discuss scheduling the remaining depositions. At this point, we do not have a preference regarding the order of depositions. We had originally proposed deposing the former opt-ins next week and the week of June 26. Let me know if that still works for you. Obviously, we will need all of the documents for each witness at least one week prior to each deposition. If you need more time to gather the documents, we should discuss scheduling.

Finally, we will be emailing you each deposition exhibit in PDF format during the deposition, as we introduce them. There are a few large exhibits from documents you recently produced, which would be easier for you to review in hard copy. For those, we will describe the document to you and then take a break to give you time to locate the documents. It would be helpful for you to have a set of the documents you produced available during the deposition.

Thanks,
Krista

-----Original Message-----

From: charles Joseph [mailto:charles@JHLLP.com]
Sent: Thursday, June 08, 2006 6:41 PM
To: Pratt, Krista
Subject: RE: will i be getting your docs tomorrow?

Sure, and that would be fine—you can give them scanned in advance to your admin, and just call her each time you are sending one. That will avoid time waiting for me to get it.

Charles Joseph
Joseph & Herzfeld LLP
757 Third Ave., 25th Floor
New York NY 10017
(212) 688-5640 phone
(212) 688-2548 fax
charles@jhllp.com
<http://www.jhllp.com>

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From: Pratt, Krista [mailto:KPratt@seyfarth.com]
Sent: Thursday, June 08, 2006 6:50 PM
To: charles Joseph
Subject: RE: will i be getting your docs tomorrow?

7/10/2006

Let me think about how to do this... maybe we could email them to you as they are introduced? Can I get back to you tomorrow?

-----Original Message-----

From: Charles Joseph [mailto:charles@JHLLP.com]
Sent: Thursday, June 08, 2006 6:35 PM
To: Pratt, Krista
Subject: RE: will i be getting your docs tomorrow?

no

Charles Joseph
Joseph & Herzfeld LLP
757 Third Ave., 25th Floor
New York NY 10017
(212) 688-5640 phone
(212) 688-2548 fax
charles@jhllp.com
<http://www.jhllp.com>

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From: Pratt, Krista [mailto:KPratt@seyfarth.com]
Sent: Thursday, June 08, 2006 6:45 PM
To: Charles Joseph
Subject: RE: will i be getting your docs tomorrow?

Is there going to be someone here defending also?

-----Original Message-----

From: Charles Joseph [mailto:charles@JHLLP.com]
Sent: Thursday, June 08, 2006 6:30 PM
To: Pratt, Krista
Subject: RE: will i be getting your docs tomorrow?

But I won't be there, I will defend by telephone. So you can fax them to me or scan them to me in the morning or as they come up. Does that work?

Charles Joseph
Joseph & Herzfeld LLP
757 Third Ave., 25th Floor
New York NY 10017
(212) 688-5640 phone
(212) 688-2548 fax
charles@jhllp.com
<http://www.jhllp.com>

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From: Pratt, Krista [mailto:KPratt@seyfarth.com]
Sent: Thursday, June 08, 2006 6:36 PM

7/10/2006

To: charles Joseph

Subject: RE: will i be getting your docs tomorrow?

I may have misunderstood your question -- do you mean our deposition exhibits? If so, they will not be ready until the day of the deposition, and we will have copies available for you at the depo.

-----Original Message-----

From: charles Joseph [mailto:charles@JHLLP.com]

Sent: Thursday, June 08, 2006 6:18 PM

To: Pratt, Krista

Subject: will i be getting your docs tomorrow?

I want to do this by telephone. But I need your exhibits. If you do not want to give me an unfair advantage, you could fax them to me the morning of the 13th.

Charles Joseph
Joseph & Herzfeld LLP
757 Third Ave., 25th Floor
New York NY 10017
(212) 688-5640 phone
(212) 688-2548 fax
charles@jhllp.com
<http://www.jhllp.com>

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Miller, Barry

From: Miller, Barry
Sent: Tuesday, June 20, 2006 11:01 AM
To: 'Maimon Kirschenbaum'
Cc: 'Charles Joseph'; 'Michael Palmer'; 'Ira Spiro'; '1 - Ira Spiro (home)'; Alfred, Richard; Pratt, Krista; Serafyn, Jennifer
Subject: Trezvant v. Fidelity

Maimon,

I left you a voicemail earlier this morning regarding our availability to complete the depositions of the Plaintiffs in the Trezvant case. In sum, we are available to take at least two depositions simultaneously on any day during the week of June 26 and on July 5-7 (in light of the holiday). We would like to take Cheryl Arch's deposition as the next in sequence, but we have no preference as to the order of the remaining Plaintiffs. As we have discussed with you and your co-counsel, we need documents pertaining to each deponent at least one week in advance of his or her deposition. We therefore need you to produce documents pertaining to Ms. Arch immediately and documents pertaining to the remaining Plaintiffs as soon as possible.

In yesterday's deposition of Ms. Trezvant, you agreed to take steps to secure and produce a few documents not included in your prior production. First, you agreed to search for and produce the form that Ms. Trezvant filled out during her employment with FESCO requesting permission to work a second job at the "dog gym." Second, you agreed to request from Franklin Pierce College and produce to us copies of documents that reflect Ms. Trezvant's academic schedule during her employment with FESCO, including the nights of the week on which she was scheduled to attend classes. Please get these documents to us as soon as possible, so that we may hope to avoid renoticing Ms. Trezvant's deposition.

Please call us at your earliest convenience to discuss the schedule for the remaining depositions and for Plaintiffs' production of documents.

Thank you,

Barry J. Miller
Seyfarth Shaw LLP
Two Seaport Lane, Suite 300
Boston, MA 02210
office phone: (617) 946-4800
direct phone: (617) 946-4806
office fax: (617) 946-4801
direct fax: (617) 790-6753

Miller, Barry

From: Pratt, Krista
Sent: Friday, June 23, 2006 3:34 PM
To: 'Maimon Kirschenbaum'
Cc: 'charles Joseph'; Miller, Barry
Subject: Fidelity

Maimon:

By our count, we have not yet scheduled the following plaintiffs for deposition: Vincent, Basiliere, Walters, Milner, and Rambin. We'd like to have their depo dates scheduled by close of business Monday. Also, we have not received any documents for Biron (who is scheduled for next Thursday). When will we receive those documents?

Thanks,
Krista

7/10/2006

Miller, Barry

From: Pratt, Krista
Sent: Thursday, June 29, 2006 2:34 PM
To: 'Ira - home'; 'Ira - office'; 'charles Joseph'
Cc: Miller, Barry; Alfred, Richard; 'Maimon Kirschenbaum'
Subject: Trezvant

Ira and Charles:

We are writing once again in an attempt to schedule the remaining plaintiffs' depositions. At this point, we still do not have deposition dates for Sweeney, Vincent, Rambin, Walters, Milner, and Basiliere. We spoke with Maimon this morning, and understand that you have had difficulty reaching (and therefore scheduling) some of the plaintiffs. However, at this stage we are running out of time, particularly given your need to take the 30(b)(6) depositions on July 13 and 14, and possibly take the supervisors' depositions as well prior to the close of discovery.

Accordingly, if we do not receive scheduling confirmation for the remaining depositions by close of business tomorrow, we will be moving to compel and/or default any plaintiffs who have not made themselves available. We regret having to take a hard line on this issue, but the depositions were originally noticed on April 27, and we cannot afford any further delays in light of the tight schedule.

On a related point, Ms. Arch testified at her deposition yesterday that she had stored emails regarding Fidelity on her home computer which crashed earlier this month, resulting in the destruction of all email files (significantly, this occurred after Defendants' served their second set of requests for production of documents). Apparently, she had not taken steps to preserve the documents or turn them over to your office before they were destroyed. The destruction of potentially relevant evidence would not have occurred if she had been scheduled for deposition earlier and had produced documents in a timely fashion. This simply underscores our point regarding the deposition schedule and document production.

We look forward to hearing from you.

Regards,
Krista

Krista Green Pratt, Esq.
Seyfarth Shaw LLP
World Trade Center East
Two Seaport Lane, Suite 300
Boston, MA 02210-2028
(617) 946-4850
(617) 946-4801 (fax)
kpratt@seyfarth.com

Miller, Barry

From: Maimon Kirschenbaum [Maimon@JHLLP.com]
Sent: Friday, July 07, 2006 4:13 PM
To: Miller, Barry; Pratt, Krista
Subject: Fidelity- Laliberte

Please cancel your court reporter, because since I have been able to reach her, I can not be confident that she will appear. We will try to reschedule.

Maimon Kirschenbaum

Joseph & Herzfeld, LLP
757 Third Avenue, 25th Floor
New York, NY 10017
Phone: (866) 348-7394
Fax: (877) 293-4152

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